

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM C. WHITE on behalf of
GLADYS E. WHITE,,

Plaintiff,

CASE NO. C11-5737 RJB

**ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION**

ABILITY INSURANCE COMPANY, a
Nebraska corporation.,

Defendant.

This matter comes before the Court on Defendant Ability Insurance Company's (Ability)

Motion for Reconsideration, Dkt. 38. Ability asserts that the Court resolved issues of disputed

facts and requests reconsideration of the Court's order regarding breach of insurance contact, bad

faith, consumer protection action, and alleged violations of the Insurance Fair Conduct Act

(IFCA). *Id.* at p. 2. Specifically, Ability contends that there are genuine issues of material fact

as to whether Plaintiff established that the insured Gladys White suffered a cognitive impairment.

or loss of functional capacity upon reinstatement of the policy. *Id.* pp. 3-6.

1 Pursuant to Local Rules W.D. Wash. CR 7(h)(1), motions for reconsideration are
2 disfavored, and will ordinarily be denied unless there is a showing of (a) manifest error in the
3 ruling, or (b) facts or legal authority which could not have been brought to the attention of the
4 court earlier, through reasonable diligence. The term “manifest error” is “an error that is plain
5 and indisputable, and that amounts to a complete disregard of the controlling law or the credible
6 evidence in the record.” *Black’s Law Dictionary* 622 (9th ed. 2009).

7 Reconsideration is an “extraordinary remedy, to be used sparingly in the interests of
8 finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d
9 877, 890 (9th Cir. 2000). “[A] motion for reconsideration should not be granted, absent highly
10 unusual circumstances, unless the district court is presented with newly discovered evidence,
11 committed clear error, or if there is an intervening change in the controlling law.” *Marlyn*
12 *Natraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). Neither
13 the Local Civil Rules nor the Federal Rule of Civil Procedure, which allow for a motion for
14 reconsideration, is intended to provide litigants with a second bite at the apple. A motion for
15 reconsideration should not be used to ask a court to rethink what the court had already thought
16 through — rightly or wrongly. *Defenders of Wildlife v. Browner*, 909 F.Supp. 1342, 1351
17 (D. Ariz. 1995). Mere disagreement with a previous order is an insufficient basis for
18 reconsideration, and reconsideration may not be based on evidence and legal arguments that
19 could have been presented at the time of the challenged decision. *Haw. Stevedores, Inc. v. HT &*
20 *T Co.*, 363 F.Supp.2d 1253, 1269 (D. Haw. 2005). “Whether or not to grant reconsideration is
21 committed to the sound discretion of the court.” *Navajo Nation v. Confederated Tribes & Bands*
22 *of the Yakima Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003).

23
24

1 As detailed in this Court's Order, when Ms. Silvernail first learned in September, 2009,
2 that her mother's policy had been terminated due to a lapse in payments, she contacted Ability
3 and informed their representative that Gladys White was cognitively impaired and requested
4 reinstatement. The Ability representative informed Ms. Silvernail that she could send
5 documentation and that the department that handles the reinstatement would have to review and
6 determine if the contract was eligible for reinstatement. On September 30, 2009, Ms. Silvernail
7 mailed documentation to Ability referencing Gladys White's dementia and cognitive problems.
8 Subsequent to this transmittal of the documentation of cognitive impairment, Ability continued
9 to justify denial of reinstatement on the basis of the purported lapse of the reinstatement period.
10 It was not until over a year later on November 1, 2010, that Ability asserted for the first time that
11 Ms. Silvernail had not adequately given proof of Gladys White's cognitive impairment or loss of
12 functional capacity. These material facts are not in dispute.

13 As stated in the Court's Order, "Ability had the obligation to act in good faith in its
14 communications with Gladys White's designee and failed to do so. Ability cannot wait until the
15 reinstatement period has terminated before asserting that Ms. Silvernail failed to provide
16 adequate documentation of cognitive impairment or loss of functional capacity." Dkt. 36 pp 16-
17 17. See *Hayden v. Mut. of Enumclaw Ins. Co.*, 141 Wash.2d 55, 63 (2000); *Bosko v. Pitts &*

18 *Still, Inc.*, 75 Wash.2d 856, 864 (1969)(When an insurer denies coverage for one reason, with
19 knowledge of other reasons for denying coverage, the insurer may be precluded from raising new
20 grounds for denying coverage under traditional principles of estoppel.)

21 There are no material issues of material fact that warrant reconsideration of the Order
22 granting of summary judgment for Plaintiff on the causes of action for breach of insurance

1 contact, bad faith, violation of the Consumer Protection Act, and violations of the Insurance Fair
2 Conduct Act.

3 Defendant has not persuaded this Court that it committed “manifest error.” Defendant
4 has not made the requisite showing for reconsideration under CR 7(h)(1).

5 Therefore, it is hereby **ORDERED** that:

6 Defendant’s Motion for Reconsideration (Dkt. 38) is **DENIED**.

7 Dated this 20th day of June, 2012.

8 
9

10 ROBERT J. BRYAN
United States District Judge

11
12
13
14
15
16
17
18
19
20
21
22
23
24